



U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



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JUL 20 2001

File: LIN 00 114 50171 Office: Nebraska Service Center Date:

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data is required to  
prevent clearly unwarranted  
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Myra L. Rosenly*  
for Robert D. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner engages in the manufacture and design of tool and die components. It seeks classification of the beneficiary as a machine trainee for a period of two years. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the beneficiary already possessed substantial training and expertise in the proposed field of training. The director decided that the petitioner had not demonstrated how the training will benefit the beneficiary in pursuing a career abroad. Finally, the petitioner has not demonstrated why it is necessary that the beneficiary be trained in the United States.

On appeal, the petitioner states that it feels that it demonstrated that it is capable of providing this training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

(ii) *Evidence required for petition involving alien trainee--* (A) *Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

- (1) Describes the type of training and supervision to be given, and the structure of the training program;
- (2) Sets forth the proportion of time that will be devoted to productive employment;
- (3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
- (4) Describes the career abroad for which the training will prepare the alien;
- (5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and
- (6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.*  
A training program may not be approved which:

- (A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;
- (B) Is incompatible with the nature of the petitioner's business or enterprise;
- (C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;
- (D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
- (E) Will result in productive employment beyond that which is incidental and necessary to the training;
- (F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;
- (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
- (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

Upon review, the petitioner has not explained sufficiently why its necessary for the beneficiary to be trained in the United States. The petitioner states that the training is not available outside of the United States. The petitioner states that it believes that it is the only company in the world in this area of manufacturing that can offer this training. The petitioner also states that the technology is not available and its production methods are not used by any other company. The petitioner states that there is available tool and die training in Northern Ireland but it cannot compare to what is provided by the petitioner. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has not demonstrated why it is necessary for the beneficiary to receive training in the United States.

The petitioner states on appeal that the beneficiary does possess training and expertise in the proposed field, but he has only been exposed and trained in certain areas of manufacturing. The areas of manufacturing that the beneficiary has not been trained or exposed to has not been defined by the petitioner. Absent the beneficiary's college transcripts and work history, the petitioner has not shown that the beneficiary does not already possess substantial training and expertise in the proposed field, especially, when the record indicates that the beneficiary studied manufacturing engineering and has previous experience in machining.

The petitioner's training program still does not mention the starting schedule or what college the beneficiary will be attending to coincide with his in-house training. The record does not contain the petitioner's course syllabus which indicates the course description, grading and evaluation criteria and the instructor's credentials. The petitioner has not developed a structured training program.

Further, the petitioner has not established that the knowledge and skill gained through the training would be used outside the United States. No evidence has been submitted to establish that the specialized training can or will be used outside the United States. The petitioner is only hoping to expand into the European market by opening a satellite plant there. Presently, the petitioner's only facility is in Cleveland, Ohio.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.